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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,700	02/07/2006	Volker Von Holt	10191/3804	1596
26646 7590 09/16/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
BURCH, MELODY M				
ART UNIT		PAPER NUMBER		
3657				
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09/16/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/524,700

Applicant(s)

VON HOLT ET AL.

Examiner

Melody M. Burch

Art Unit

3657

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7, 8 and 10-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7, 8 and 10-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I in the reply filed on 1/26/09 is acknowledged. Upon further review, Examiner has withdrawn the restriction requirement because although claim 7 is directed to a method for automatically initiating an emergency braking sequence and claim 12 is directed to a control unit, the control unit includes a situation analyzer unit which corrects the provisional point in time of initiating emergency braking similar to the way in which the method varies emergency braking initiating times.

Claim Objections

2. Claims 7, 8, and 10-17 are objected to because of the following informalities: the phrase "the attainable vehicle deceleration" first recited in line 3 from the bottom of claim 1 lacks proper antecedent basis in the claim. A similar issue exists in claims 10, 14, 16, and 17. Also in lines 2-3 from the bottom of claim 12 the phrase "an emergency " should be changed to --the emergency--. Appropriate correction is required. The remaining claims are objected to due to their dependency from one of claims 7 and 12.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7, 8, 10, 11, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re: claim 7. The phrase "a correlated state variable" in line 4 from the bottom of claim 7 is indefinite. It is unclear to the Examiner whether the correlated state variable in line 4 from the bottom of claim 7 is intended to be the same or different from that recited earlier in the claim. The remaining claims are indefinite due to their dependency from claim 7.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7, 8, and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4048613 to Ito et al. in view of DE-4310354 (DE'354) and further in view of US Patent 6322163 to Siegel.

Ito et al. disclose a method for automatically initiating an emergency braking sequence comprising: performing a preliminary warning braking in a motor vehicle as disclosed in col. 4 lines 10-13.

Ito et al. disclose the limitation of later initiating an emergency braking as disclosed in col. 4 lines 11-13, but lack the limitation of determining an achievable

vehicle deceleration during the preliminary warning braking, and varying a time of initiating the emergency braking as a function of the determined achievable vehicle deceleration.

DE'354 teaches in the admitted prior art section of the instant specification pg. 1 line 19 – pg. 2 line 3 the use of determining information such as the coefficient of friction of the roadway on which the vehicle travels during a warning braking and using the information to adjust a setpoint distance based on the determined brakability and stopping distance of the vehicle which is a function of the achievable vehicle deceleration.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method for automatically initiating an emergency braking sequence of Ito et al. to have used determined information gained during the warning braking to vary the time of initiating the subsequent emergency braking, as taught by DE'354, in order to increase driving safety according to the particular road conditions.

Ito et al., as modified, describe the invention as set forth above but lack the limitation of decelerating at least one wheel of the motor vehicle to a slip limit during preliminary warning braking.

Siegel teaches in col. 1 lines 59-62 the method of decelerating at least one wheel of the motor vehicle to a slip limit during the preliminary warning braking (or normal braking as opposed to emergency braking)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Ito et al., as modified, to have decelerated the at least one wheel (a rear wheel, for example) to a slip limit, as taught by Siegel, in order to provide a means of dynamically controlling the vehicle to force the front wheels to lock before the rear wheels. As broadly recited, Examiner notes that a correlated state variable attaining a defined maximum value may include a slip limit.

7. Claims 7, 8, and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimoto in view of US Patent to Siegel.

Sugimoto describes a method for automatically initiating an emergency braking sequence comprising: performing a preliminary warning braking in a motor vehicle, determining an achievable vehicle deceleration during the preliminary warning braking, and varying a time of initiating an emergency braking as a function of the determined achievable vehicle deceleration as disclosed in col. 8 lines 12-49.

Sugimoto describes the invention as set forth above but lacks the limitation of decelerating at least one wheel of the motor vehicle to a slip limit during preliminary warning braking.

Siegel teaches in col. 1 lines 59-62 the method of decelerating at least one wheel of the motor vehicle to a slip limit during the preliminary warning braking (or normal braking as opposed to emergency braking)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method of Sugimoto to have decelerated the at least one wheel (a rear wheel, for example) to a slip limit, as taught by Siegel, in

order to provide a means of dynamically controlling the vehicle to force the front wheels to lock before the rear wheels.

Response to Arguments

8. Applicant's arguments filed 6/8/09 have been fully considered but they are not persuasive. Applicant first argues that Sugimoto does not disclose the feature of "varying a time of initiating an emergency braking" and supports his position by stating that "it is abundantly clear from Figure 7 and the related text that the emergency braking of Sugimoto starts at the same time regardless of slip condition." Examiner agrees that in one embodiment Sugimoto discusses lowering the braking slope, but notes that Sugimoto describes another embodiment including the feature of varying the time of initiating the emergency braking as discussed in col. 8 lines 45-50. Applicant then argues that the prior art of record fails to include the limitations of claim 9 which have been incorporated into claim 7. Examiner maintains that, as broadly recited, the slip limit described in the base references may be considered a defined maximum value of a correlated state variable and the deceleration resulting from the braking that occurs due to the reaching of the slip limit may be considered as a high estimated value of the attainable vehicle deceleration. Accordingly, the references used in the rejections have been maintained.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melody M. Burch whose telephone number is 571-272-7114. The examiner can normally be reached on Monday-Friday (6:30 AM-3:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mmb
September 14, 2009

/Melody M. Burch/

Primary Examiner, Art Unit 3657